

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

ENVIRONMENTAL LAW AND POLICY)	
CENTER, et al.,)	
Plaintiffs,)	
)	No. 3:17-cv-1514
v.)	
)	Hon. James G. Carr
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY, et al.,)	
Defendants.)	
)	

STATUS REPORT

In accordance with the Court's April 11, 2018, Order (Doc. 29), Defendants file this status report.

On May 4, 2018, Ohio EPA submitted to U.S. EPA an amendment to Ohio's 2016 Integrated Water Quality Monitoring and Assessment Report, which includes Ohio's 2016 list of impaired waters under Section 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d). *See* Letter from Tiffani Kavalec, Chief, Division of Surface Water, Ohio EPA, to Peter Swenson, Chief, Watersheds and Wetlands Branch, U.S. EPA Region 5 (May 4, 2018) (attached as Ex. 1). In this amendment, Ohio revised its 2016 Section 303(d) list of impaired waters, adding three assessment units for the open waters of Lake Erie: the Western Basin, the Sandusky Bay area, and the Central Basin. *See* 2016 Integrated Water Quality Monitoring and Assessment Report – Amendment (May 2018), at 1, *id.* at L3-1 (attached as Ex. 2). These three assessment units are the same as Ohio has proposed to add in its 2018 integrated report. As with the proposed 2018 Section 303(d) list, the amended 2016 Section 303(d) list now includes these three Lake Erie open water assessment units as impaired. *Id.* at L3-1. In particular, Ohio lists the Western Basin as impaired for recreational use, and all three assessment units as impaired for public drinking

water supply use. *Id.*

On May 10, 2018, U.S. EPA approved these listing decisions. *See* Letter from Cathy Stepp, Regional Administrator, U.S. EPA Region 5, to Tiffani Kavalec, Chief, Division of Surface Water, Ohio EPA (May 10, 2018) (attached as Ex. 3).

U.S. EPA's May 10 action complies with 33 U.S.C. § 1313(d)(2), which provides that U.S. EPA "shall either approve or disapprove such identification" of impaired waters "not later than thirty days after the date of submission." U.S. EPA's May 10 action also moots Plaintiffs' claims, to the extent the Court has jurisdiction. *See* April 11, 2018, Order (Doc. 29) at 24 n.15 (citing *Anacostia Riverkeeper, Inc. v. Jackson*, 713 F. Supp.2d 50, 51 n.1 (D.D.C. 2010)).

On May 11, undersigned counsel informed Plaintiffs' counsel of EPA's May 10 action and of EPA's position that the case is moot.

Respectfully submitted this 11th day of May 2018.

JEFFREY H. WOOD
Acting Assistant Attorney General
United States Department of Justice
Environment & Natural Resources Division

/s/ Daniel R. Dertke
DANIEL R. DERTKE,
United States Department of Justice
Environment & Natural Resources Division
Environmental Defense Section
P.O. Box 7611
Washington, D.C. 20044
Tel: (202) 514-0994
daniel.dertke@usdoj.gov

JUSTIN E. HERDMAN
United States Attorney

JODY L. KING (0094125)
Assistant United States Attorney
Office of the U.S. Attorney
Northern District of Ohio

Four Seagate, Suite 308
Toledo, OH 43604-2624
Tel: (419) 259-6376
Fax: (419) 259-6360
Jody.King@usdoj.gov

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2018, I electronically filed the foregoing STATUS REPORT with the Clerk of the Court by using the CM/ECF system. The participants in the case are registered CM/ECF users and service will be accomplished by the CM/ECF system.

/s/ Daniel R. Dertke

Daniel R. Dertke